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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Coleman Family Revocable Living Trust,
by and through Trustees Sahar Lewis and
Pluyd Coleman,

Plaintiffs,

v.

PNC Bank, N.A., Matrix Trust Company,
Clear Recon Corp., Stefanie Armijo, Does
1 through 20,

Defendants.

CASE NO.: 2:25-cv-00791

**PNC Bank's Motion to Dismiss
First Amended Complaint**

PNC Bank, N.A. ("PNC Bank"), by and through its counsel of record, Wolfe & Wyman LLP, hereby moves to dismiss Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the First Amended Complaint fails to state a claim upon which relief can be granted. This motion is supported by the accompanying Memorandum of Points and Authorities, all pleadings and papers on file in this action, and any oral argument the Court may permit.

I.**Introduction**

Plaintiffs' First Amended Complaint ("FAC") fails to state any viable claim for relief against PNC Bank. As an initial matter, the newly named Plaintiffs in the FAC lack standing to bring this case and/or represent the Coleman Family trust. In the initial Complaint, Plaintiff was the Coleman Family Revocable Living Trust, by and through Trustees Sahar Lewis and Pluyd Coleman, and the trust attempted to appear *pro se*. But this Court instructed the trust that it could not appear *pro se* and needed to obtain representation. Instead of obtaining representation, the First Amended Complaint was amended and the Plaintiffs are now Pluyd Coleman and Sahar Lewis, individually. Plaintiffs are unable to make an end run around this Court's prior order through the FAC.

Further, on its merits, the FAC asserts causes of action for breach of contract, securities fraud, wrongful foreclosure, and quiet title, each claim is either legally deficient, impermissibly vague, or both. Plaintiffs' allegations center on the notion that they satisfied their mortgage debt by tendering an unspecified "negotiable instrument," and that PNC Bank wrongfully rejected it and proceeded with foreclosure. But the FAC provides no detail regarding the timing, amount, or nature of the alleged payment, and no factual basis to support the conclusion that PNC Bank's actions were wrongful or unlawful.

The other allegations in the FAC provide no more substance. The FAC's attempt to assert a RESPA-based violation is unsupported and fails to identify any actionable conduct or resulting damages. The securities fraud claim relies on statutes that are inapplicable to a consumer mortgage transaction and is pleaded without any factual particularity. The wrongful foreclosure claim is not supported by any allegation that Plaintiffs were current on their loan or that PNC Bank lacked authority to foreclose. And the quiet title claim is entirely derivative of the wrongful foreclosure theory and fails for the same reasons.

1 Because Plaintiffs have failed to plead sufficient facts under any recognized
2 theory of liability, the FAC should be dismissed in its entirety under Rule 12(b)(6).

3 II.

4 Background

5 A. Factual Background

6 On or about December 21, 2020, a Grant, Bargain, Sale Deed was recorded
7 reflecting that Plaintiff Sahar Lewis acquired title to the subject property located at
8 3139 Belvedere Dr. in Henderson, Nevada 89014 (the “Property”). Subsequently, on
9 December 14, 2021, a Deed of Trust was recorded against the property to secure a
10 mortgage loan of \$270,000.00 given by North American Financial Corp. to Sahar
11 Lewis as borrower. The Deed of Trust named Mortgage Electronic Registration
12 Systems, Inc., as nominee for the lender and its successors, as the beneficiary. This
13 loan and Deed of Trust form the basis of Plaintiffs’ claims.

14 B. Judicially Noticeable Matters

15 A court may take judicial notice of matters of public record pursuant to Federal
16 Rules of Evidence, Rule 201, when deciding a motion to dismiss for failure to state a
17 claim. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 n.9 (9th Cir. 2012).
18 Here, the documents recorded in the Clark County Recorder’s Office are judicially
19 noticeable and show the following facts:

20 On or about December 21, 2020, a Grant, Bargain, Sale Deed was recorded,
21 reflecting that Sahar Lewis acquired title to the Property. See Exhibit 1, attached
22 hereto.

23 On or about December 14, 2021, a Deed of Trust was recorded, encumbering
24 the Subject Property. The Deed of Trust secured a loan in the original principal
25 amount of \$270,000.00 made by North American Financial Corp. (as lender) to Sahar
26 Lewis (as borrower). Mortgage Electronic Registration Systems, Inc. (“MERS”), as
27 nominee for the lender and its successors and assigns, was identified as the beneficiary
28 under the Deed of Trust. See Deed of Trust, attached hereto as Exhibit 2.

1 On or about June 14, 2024, an Assignment of Deed of Trust was recorded,
2 transferring all rights, title, and interest in the Deed of Trust from MERS, as nominee
3 for North American Financial Corp., to PNC Bank, National Association. See Exhibit
4 3, attached hereto.

5 On or about April 3, 2025, a Corporate Assignment of Deed of Trust was
6 recorded, reflecting that the beneficial interest under the Deed of Trust was assigned
7 from PNC Bank, National Association to Federal Home Loan Mortgage Corporation.
8 See Exhibit 4, attached hereto.

9 On or about May 7, 2024, a Quitclaim Deed was recorded, reflecting that Sahar
10 Lewis transferred the Subject Property to herself and Pluyd Coleman Jr. as trustees of
11 the Coleman Family Revocable Living Trust, dated September 17, 2023 (the “Trust”).
12 See Exhibit 5, attached hereto.

13 On or about December 2, 2024, a Notice of Default and Election to Sell Under
14 Deed of Trust was recorded. The Notice states that a default occurred based on
15 nonpayment of the installment due on April 1, 2024, and all subsequent payments.
16 Clear Recon Corp. was identified as the trustee, and PNC Bank, National Association
17 was named as the beneficiary at the time of recording. See Exhibit 6, attached hereto.

18 On or about May 9, 2025, a foreclosure trustee’s sale was conducted by Clear
19 Recon Corp., as trustee under the Deed of Trust. At the sale, the Subject Property was
20 sold for the amount of \$280,000.00.

21 **C. Allegations in the FAC**

22 The FAC is comprised almost entirely of conclusory statements. Plaintiffs
23 allege that they tendered a negotiable instrument to PNC Bank in satisfaction of their
24 mortgage loan, and that PNC Bank improperly rejected it, yet they fail to allege when
25 the tender occurred, the amount tendered, or any facts explaining why PNC Bank’s
26 rejection was improper. See ECF no. 27 at ¶ 10. Plaintiffs also claim they submitted a
27 Qualified Written Request under RESPA, but they do not identify the specific RESPA
28 provision allegedly violated, the content of the purported response, or any resulting

1 damages. *Id.* ¶ 11. Additionally, they allege that PNC Bank foreclosed on the property
 2 while litigation was pending, but provide no context or legal basis for why this was
 3 improper. *Id.* ¶ 13.

4 The FAC attempts to assert four causes of action premised on these bare
 5 allegations: (1) Breach of Contract, (2) Securities Fraud, (3) Wrongful Foreclosure,
 6 and (4) Quiet Title. *See id.* at 3–4. As explained below, each claim should be
 7 dismissed because it is either (a) insufficiently pleaded, lacking the necessary factual
 8 detail and specificity, or (b) based on an incorrect or unsupported legal theory.¹

9 III.

10 Legal Standard

11 A Motion to Dismiss under Rule 12(b)(6) “may only be granted when it is clear
 12 to the Court that “no relief could be granted under any set of facts that could be
 13 proven consistent with the allegations.” *FTC v. Johnson*, No. 2:10-cv-02203-MMD-
 14 GWF, 2013 U.S. Dist. LEXIS 80341, at *23 (D. Nev. June 6, 2013) (internal
 15 quotation omitted) (citing *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th
 16 Cir. 1988)). “Dismissal under Rule 12(b)(6) may be based on either the lack of a
 17 cognizable legal theory or absence of sufficient facts alleged under a cognizable legal
 18 theory.” *Id.* (citing *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
 19 1990)).

20 “A plaintiff’s complaint must allege facts to state a claim for relief that is
 21 plausible on its face.” *FTC v. Johnson*, at *23 (emphasis added) (citing *Ashcroft v.*
 22 *Iqbal*, 556 U.S. 662, 677, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). “A claim has
 23 ‘facial plausibility’ when the party seeking relief ‘pleads factual content that allows
 24 the court to draw the reasonable inference that the defendant is liable for the
 25

26 ¹ It is worth noting that the First Amended Complaint appears to bear several
 27 hallmarks of AI-generated content, including horizontal lines, vague and conclusory
 28 language, lack of factual development, and absence of legal citations or evidentiary
 detail. While the use of drafting technology is not improper in itself, it may explain
 the generalized and unsupported nature of the allegations, which fall well short of
 federal pleading standards.

misconduct alleged.” *Id.* at *23-24 (quoting *Iqbal*, 556 U.S. at 677, 129 S. Ct. 1937). “Although the Court must accept as true the well-pled facts in a complaint, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6) motion.” *Id.* (internal citations omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* (alterations in original) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citations and footnote omitted)). The Court does not supply a central element of a claim that a plaintiff fails to plead. *Richards v. Harper*, 864 F.2d 85, 88 (9th Cir. 1988).

In addition to these minimal requirements, “[f]raud claims must meet a heightened pleading standard under Federal Rule of Civil Procedure 9(b), which requires a party to “state with particularity the circumstances constituting fraud.” *FTC v. Johnson*, at *24. “The plaintiff must plead with particularity the who, what, when, where, and how of the misconduct charged.” *Id.* (emphasis added) (quoting *Vess v. Ciba—Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir.2003) (internal quotation marks omitted)). “Rule 9(b) demands that, when averments of fraud are made, the circumstances constituting the alleged fraud be specific enough to give defendants notice of the particular misconduct so that they can defend against the charge and not just deny that they have done anything wrong.” *Id.* (quoting *Vess*, 317 F.3d at 1108) (internal quotation marks omitted)).

The Court “may consider certain materials -- documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice -- without converting the motion to dismiss into a motion for summary judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (internal citations omitted). “Certain written instruments attached to pleadings may be considered part of the pleading.” *Id.*, *see also* Fed. R. Civ. P. 10(c).

IV.

Argument

A. The substitution of Coleman and Lewis in their individual capacities does not cure the standing deficiencies or the prohibition against trustee self-representation by non-attorneys.

Before addressing the substantive deficiencies in the First Amended Complaint, it is necessary to address preliminary issues of standing and the prohibition against trustee self-representation by non-attorneys.

1. Despite being named individually, Lewis and Coleman are still attempting to represent the Trust, which they cannot do without licensed counsel.

As the Court has already recognized, the right to self-representation is personal and does not extend to representation of a separate legal entity such as a trust. *Guerin v. Guerin*, 116 Nev. 210, 214 (2000). A trust must appear in court through licensed counsel. *Id.*; see also *Salman v. Newell*, 110 Nev. 1333, 1335 (1994); *Hale Joy Trust v. Commissioner*, 57 Fed. Appx. 323 (9th Cir. 2003); NRS 7.28; Supreme Court Rule 77.

Here, Plaintiffs have admitted, and this Court can take judicial notice, that Plaintiffs transferred the property to their trust. *See* Ex. 5; ECF No. 7 at 1-2 (alleging that the Trust is the owner of the Property).

Plaintiffs do not own the Property and, thus, because the claims relate to possession, title, and foreclosure of the property, the Trust is the real party in interest. The Trust must assert these claims through counsel and Plaintiffs are not counsel. Dismissal is required for this reason alone.

2. Coleman lacks standing to raise any claims because he is neither the borrower nor an owner of the Property.

The question of standing focuses on whether the party seeking adjudication has a substantive right that is enforceable under the substantive law. *See Szilagyi v. Testa*, 99 Nev. 834, 838 (1983); NRCF 17(a). In diversity cases, this question is resolved by state law. *Am. Triticale, Inc. v. Nytco Services, Inc.*, 664 F.2d 1136, 1141 (9th Cir.

1 1981). “[A] party has standing to assert only its own rights and cannot raise the claims
2 of a third party not before the court.” *High Noon at Arlington Ranch Homeowners*
3 *Ass’n v. Eighth Judicial Dist. Court*, 133 Nev. 500, 507 (2017).

4 Here, the relevant loan documents—specifically, the Deed of Trust recorded on
5 December 14, 2021—identify Sahar Lewis as the sole borrower. Coleman is not a
6 borrower on the loan and was not an owner of the property until May 7, 2024, when a
7 quitclaim deed was recorded transferring title to the Trust. That transfer occurred well
8 after the loan originated and after the alleged tender and QWR events at the center of
9 this dispute.

10 As a result, Coleman has no legally cognizable interest in the claims arising
11 from the origination, servicing, or enforcement of the loan. He is not a party to the
12 loan agreement and cannot assert claims on behalf of a borrower. His interests are not
13 sufficient to create standing for claims that accrued before he held any involvement
14 with the loan.

15 Accordingly, for this separate and independent reason, Coleman should be
16 dismissed for lack of standing.

17 **B. The FAC’s breach of contract claim is based on an impermissibly vague and**
18 **unsupported allegation of tender**

19 Turning now to each of the causes of action alleged in the Complaint, the
20 FAC’s first claim for relief is for breach of contract. To establish a claim for breach of
21 contract, Plaintiffs must allege: (1) formation of a valid contract; (2) performance or
22 excuse of performance by the plaintiffs; (3) material breach by the defendant; and (4)
23 damages. *Padilla Constr. Co. of Nevada v. Big-D Constr. Corp.*, 132 Nev. 1014
24 (2016); *Johnston v. Int’l Mixed Martial Arts Fed’n*, 2:14-CV-941-JAD-NJK, 2015
25 WL 273619, at *3 (D. Nev. Jan. 22, 2015). The FAC alleges that PNC Bank breached
26 a contract with Plaintiffs by “failing to apply payment, failing to properly respond to a
27 QWR, and proceeding with foreclosure despite payment and dispute.” ECF No. 27 at
28 ¶ 17. The QWR and wrongful foreclosure allegations are addressed below. These

1 allegations cannot support a claim for breach of contract.

2 The remaining allegation—that Plaintiffs tendered a negotiable instrument that
3 PNC Bank rejected—is both vague and unsupported. To begin with, the nature of the
4 alleged tender is unclear. Plaintiffs do not specify whether they attempted to pay the
5 full balance of the loan, which PNC Bank declined, or whether they offered a lesser
6 amount purportedly in full satisfaction of the debt under the doctrine of accord and
7 satisfaction. Under either scenario, the FAC fails to state an actionable claim for relief.

8 **1. The FAC does not state a claim for accord and satisfaction.**

9 Under Nevada law, a litigant must satisfy three elements to state a claim for
10 accord and satisfaction: (1) a bona fide dispute over an unliquidated amount; (2) a
11 payment tendered in full settlement of the entire dispute; and (3) an understanding by
12 the creditor of the transaction as such, and acceptance of the payment. *Pierce Lathing*
13 *Co. v. ISEC, Inc.*, 114 Nev. 291, 297 (1998). The Nevada Supreme Court has
14 reiterated that “a prerequisite for the finding of an accord and satisfaction is a clearly
15 established meeting of the minds.” *Id.*; *see also Matthews v. Collman*, 110 Nev. 940,
16 947, 878 P.2d 971, 976 (1994).

17 In this case, the FAC offers only an ambiguous reference to a “settlement
18 payment” that was tendered, without any detail about the amount or any agreement by
19 PNC Bank to accept it as full settlement. Plaintiffs do not describe any
20 communications showing that PNC Bank knowingly agreed to discharge the \$270,000
21 loan obligation in exchange for this payment. There are no facts indicating a meeting
22 of the minds or that PNC Bank understood the payment to be in full satisfaction of the
23 loan. And, in fact, the allegations of foreclosure cut against such a conclusion. Absent
24 such factual allegations, Plaintiffs cannot establish an accord and satisfaction.
25 Accordingly, to the extent the FAC relies on an accord-and-satisfaction theory, it fails
26 to state a claim and cannot support any cause of action.
27
28

1 **2. The FAC does not state that Plaintiffs tendered the full payoff amount**
2 **or terms proposed with the alleged tender.**

3 Likewise, Plaintiffs failed to allege that they tendered the full payoff amount of
4 the loan because their tender allegation is pleaded in a conclusory manner without the
5 requisite supporting facts. The FAC does not specify when this supposed payoff was
6 made, how much was paid, how it was tendered, and what additional terms these self-
7 represented plaintiffs offered with the tender. Critically, *Plaintiffs never state that the*
8 *amount tendered was equal to the total outstanding balance of the loan.* If Plaintiffs
9 are claiming the loan was completely paid off, one would expect the complaint to
10 include facts such as the loan balance at the time and a statement that Plaintiffs paid
11 that amount (or a calculation showing full satisfaction). Instead, the FAC gives none
12 of these details. It merely concludes that a payment was made and that the loan should
13 be considered satisfied. Such a threadbare assertion is not entitled to any presumption
14 of truth on a motion to dismiss. The Supreme Court has made clear that a plaintiff
15 must plead factual content, not just labels or conclusions, to push a claim from
16 conceivable to plausible. Because Plaintiffs have not alleged facts showing that they
17 actually tendered the full amount owed on the loan, their payoff/tender allegation is
18 deficient. This defect is fatal to any claim predicated on the notion that the loan was
19 satisfied and PNC Bank had no right to enforce further payment.

20 **C. The FAC's securities fraud claim relies on inapplicable authority and is**
21 **entirely conclusory.**

22 Plaintiff's second cause of action is a four-paragraph request seeking damages
23 for securities fraud under 15 U.S.C. §§ 77q, 78j; NRS Chapter 90. ECF no. 27 at ¶ 20-
24 23. This claim is legally baseless and does not satisfy FRCP 9(b)'s heightened
specificity requirement.

25 Each of the statutes relied on is inapplicable to Plaintiff's claims. 15 U.S.C. §
26 77q prohibits engaging in fraud when selling securities. The consumer loan
27 transaction identified in the complaint does not fall within the definition of security
28 under 15 U.S.C. § 77(b)(a)(1). Accordingly, 15. U.S.C. § 17q cannot give rise to

1 liability.

2 15 U.S.C. § 78j prohibits certain conduct in connection with “any national
3 securities exchange.” Again, the loan transaction identified in the FAC does not fall
4 within the definition of “exchange” under 15 U.S.C. § 78c(a)(1).

5 NRS 91.010 provides: “This chapter is not intended to create any rights or
6 remedies upon which actions may be brought by private persons against persons who
7 violate the provisions of this chapter.” Thus, NRS Chapter 90 cannot be a basis for
8 Plaintiffs’ claims.

9 In addition to these plain legal deficiencies, the fraud claim fails to satisfy the
10 heightened pleading requirements. The FAC fails to identify what specific facts were
11 allegedly concealed, what misrepresentations were made, when or how they were
12 communicated, or who at PNC Bank made them. The FAC’s conclusory and
13 generalized statements do not provide the required particularity and are insufficient to
14 place the defendant on notice of the alleged fraud.

15 Plaintiffs’ claims based on securities fraud or deceptive practices should be
16 dismissed.

17 **D. The FAC’s wrongful foreclosure claim does not allege cognizable legal or**
18 **factual defects in the foreclosure process.**

19 The FAC’s cause of action for wrongful foreclosure is deficient because
20 Plaintiffs do not allege the required elements. Under Nevada law, a wrongful
21 foreclosure claim generally requires the plaintiff to plead that no breach of condition
22 of the deed of trust (no default) existed at the time the power of sale was exercised, or
23 that the foreclosing party otherwise had no legal right to foreclose. *Collins v. Union*
24 *Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 304 (1983).

25 Here, the FAC does not meaningfully allege either that the Plaintiffs were not in
26 default or that PNC Bank had no legal right to foreclose. Instead, Plaintiffs argue that
27 they “tendered payment in full,” “initiated dispute procedures,” and that PNC Bank
28 foreclosed “despite notice of pending litigation and lis pendens.” ECF No. 27 at ¶¶ 26-

27. These are vague, conclusory, and generic statements that do not satisfy the notice pleading standard. In fact, Plaintiffs' theory implies that they *were* in default but attempted to cure it by a belated payment (the alleged tender). Nowhere do they claim to have fully and timely performed under the loan. Moreover, Plaintiffs identify no procedural defect in the foreclosure process under Nevada's statutes and no fact suggesting that PNC Bank lacked authority to foreclose. Their wrongful foreclosure claim is founded solely on the argument that the foreclosure should not have proceeded because of the purported settlement or payoff or because they disputed enforcement or the security interest. These premises are not supported by sufficient facts. This Court should therefore dismiss the wrongful foreclosure cause of action.

E. The FAC's quiet title claim is entirely derivative of the defective wrongful foreclosure claim.

Plaintiffs' quiet title cause of action rests entirely on the premise that the foreclosure of their property was wrongful. In other words, they claim that their title has been clouded solely because PNC Bank allegedly had no right to foreclose. ECF No. 27 at ¶ 34. However, as demonstrated above, Plaintiffs have failed to plead any viable basis for wrongful foreclosure. They do not allege that they were current on the loan at the time of foreclosure, nor do they identify any substantive defect in the foreclosure process itself. Absent a valid challenge to the foreclosure, the quiet title claim necessarily fails.

A quiet title action requires the plaintiff to allege a present adverse claim to title. *See Chapman v. Deutsche Bank Nat'l Tr. Co.*, 302 P.3d 1103, 1106 (Nev. 2013). Plaintiffs allege no actual, substantive facts establishing that they hold superior title. Moreover, PNC Bank does not hold title against Plaintiff. The buyer at the foreclosure sale is the party with a claim to title. Because Plaintiffs have not stated any actionable claim that would invalidate the foreclosure or establish superior title, their quiet title cause of action should be dismissed.

F. The FAC's RESPA allegations are deficient because they do not identify the substance of Plaintiffs' QWR, a substantive violation by PNC Bank, or damages.

The FAC does not assert a separate cause of action for RESPA but does reference both a QWR and RESPA. ECF No. 20 at ¶ 11, 17. These oblique references to a QWR and RESPA do not provide any meaningful information that, if true, would show PNC Bank is liable to Plaintiffs for a RESPA violation. Mere recitation of a failure to respond to a Qualified Written Request ("QWR") does not state a claim for a RESPA violation. *See Medrano v. Flagstar Bank, FSB*, 704 F.3d 661, 666 (9th Cir. 2012). The Plaintiff must allege facts demonstrating (1) actual receipt by the servicer, (2) specific information requested related to servicing, and (3) damages caused by the alleged noncompliance. *See id.* Additionally, courts in this district require "a QWR to specifically state the belief that there are errors in servicing of a loan, rather than assert disputes about the creation or modification of a loan." *Guerra v. Just Mortgage, Inc.*, 2:10-CV-00029-KJD, 2013 WL 1561114 (D. Nev. Apr. 12, 2013). A plaintiff must show "pecuniary damages in order to state a claim." *Allen v. United Financial Mortg. Corp.*, 660 F.Supp.2d 1089, 1097 (N.D.Cal.2009). Any damages alleged must be causally related to the violation. *Jones v. ABN AMRO Mortgage Grp., Inc.*, 551 F. Supp. 2d 400, 409 (E.D. Pa. 2008) *aff'd*, 606 F.3d 119 (3d Cir. 2010) (Plaintiff must establish causation). A plaintiff is only entitled to recover for the loss that relate to the RESPA violation, not for all losses related to foreclosure activity. *See Foley v. Wells Fargo Bank, N.A.*, No. 3:10-CV-00702-RCJ, 2012 WL 4052022, at *6 (D. Nev. Sept. 13, 2012).

Here, Plaintiffs' bare allegation that they submitted an unspecified request and that PNC Bank failed to "validate the debt or provide a full accounting" is exactly the sort of formulaic recitation that cannot survive a Rule 12(b)(6) motion. The FAC does not identify any specific provision of RESPA that was violated, nor does it describe what conduct by PNC Bank gave rise to the need for a QWR. And the claim would still fail because Plaintiffs have not alleged any resulting harm. RESPA provides for a

1 private cause of action only if the borrower suffers actual damages from the servicer's
2 violation or can show a pattern or practice of noncompliance for additional statutory
3 damages. *See* 12 U.S.C. § 2605(f)(1); *Noble v. Caliber Home Loans, Inc.*, 727 Fed.
4 Appx. 440 (9th Cir. 2018).

5 Because Plaintiffs allege no concrete harm and no specific RESPA violation,
6 their RESPA allegations are not plausible and should be dismissed.

7 **V.**

8 **Conclusion**

9 Plaintiffs' First Amended Complaint should be dismissed in its entirety.
10 Plaintiffs lack standing to assert the claims alleged, and their continued attempt to
11 prosecute this case without counsel on behalf of a trust is impermissible under settled
12 law. Even if those threshold issues could be overcome, each of the asserted causes of
13 action is fatally deficient—either because it is based on an inapplicable legal theory or
14 because it is pled in conclusory terms without the factual detail required to state a
15 claim under Rule 12(b)(6). Plaintiffs have already amended their complaint once and
16 have failed to cure these defects. Accordingly, the Court should dismiss the First
17 Amended Complaint with prejudice.

18 DATED: June 4, 2025

WOLFE & WYMAN LLP

21 By: /s/ DAVID T. BLAKE
22 DAVID T. BLAKE, ESQ.
23 Nevada Bar No. 11059
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25
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27
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CERTIFICATE OF ELECTRONIC SERVICE

On May 22, 2025, I served the foregoing **PNC Bank’s Motion to Dismiss First Amended Complaint** by the following means to the persons as listed below:

☒ a. **CM/EFC System**, electronic filing system of the United States District Court of Nevada.

WOLFE & WYMAN LLP

By: /s/ DAVID T. BLAKE
DAVID T. BLAKE, ESQ.
Nevada Bar No. 11059